

AUG 19 2005

J. DAVID NAVARRO, Clerk
By DEBBIE RIVERA
DEPUTY

James S. Lochhead
Adam T. DeVoe
BROWNSTEIN HYATT & FARBER, P.C.
410 17th Street
Twenty-Second Floor
Denver, Colorado 80202
jlochhead@bhf-law.com
adevoe@bhf-law.com
Telephone: (303) 223-1100
Facsimile: (303) 223-1111

DUFF MOORE

RECEIVED

AUG 24 2005

DEPARTMENT OF
WATER RESOURCES

James Tucker, #2038
Senior Attorney,
Idaho Power Company
Legal Dept.
1221 West Idaho Street
Boise, Idaho 83702
Telephone: (208) 388-2112
Facsimile: (208) 388-6935

Attorneys for Petitioner/Plaintiff Idaho Power Company

**IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

OF THE STATE OF IDAHO

IDAHO POWER COMPANY,)
)
Petitioner, Plaintiff)
)
vs.)
)
KARL J. DREHER, in his official capacity)
as Director of the Idaho Department of)
Water Resources,)
)
Respondents/Defendants.)
_____)

CASE NO. CV 00 0506175
PETITION FOR JUDICIAL
REVIEW OF AGENCY ACTION

COMES NOW, the Petitioner/Plaintiff, Idaho Power Company ("Idaho Power"), by and
through its undersigned counsel, and hereby files this Petition as follows:

STATEMENT OF THE CASE

1. This is a civil action pursuant to Idaho Code § 67-5279 seeking judicial review of a final order of the Respondent, Karl Dreher, in his official capacity as Director of the Idaho Department of Water Resources.

2. Specifically, Idaho Power petitions this court for a finding that the Respondent erred in determining that Idaho Power is not an aggrieved party entitled to a hearing on the Respondent's Order regarding replacement of water for the benefit of senior water rights holders on the Snake River or curtailment of junior ground water rights in the Eastern Snake Plains Aquifer.

JURISDICTION AND VENUE

3. This petition is authorized by Idaho Code §§ 42-1701A(4) and 67-5270.

4. This Court has jurisdiction over this action pursuant to Idaho Code §§ 42-1401D and 67-5272 .

5. Venue lies in this Court pursuant to Idaho Code §§ 42-1401D and 67-5272.

6. Petitioner Idaho Power exhausted all administrative remedies prior to the filing of this Petition.

PARTIES

7. Petitioner Idaho Power is an Idaho Corporation, with its principal office in Boise, Ada County, Idaho.

8. Respondent Karl J. Dreher is a resident of Ada County, Idaho, and is the Director of the Idaho Department of Water Resources ("IDWR"), with its main offices located at 322 E. Front Street, Boise, Idaho.

AGENCY RECORD

9. Judicial review is sought of the July 22, 2005, "Order Denying Idaho Power's Petition for Hearing."

10. The Director of the Idaho Department of Water Resources conducted a prehearing status conference on June 15, 2005, which was recorded and a transcript was created, which transcript should be made a part of the agency record in this matter. The person who may have a copy of such transcript is Victoria Wigle, Director's Administrative Assistant Idaho Department of Water Resources, 322 E. Front Street, P.O. Box 83720, Boise, Idaho 83720-0098, Telephone: (208) 287-4803, Facsimile: (208) 287-6700, e-mail: victoria.wigle@idwr.idaho.gov. Idaho Power will pay the necessary fee for preparation of the transcript at the time the agency record is prepared in this matter.

11. Petitioner anticipates that it can reach a stipulation regarding the agency record with the Idaho Department of Water Resources, and will pay the necessary fee for preparation of the record at such time.

12. Service of this Petition for Judicial Review of Agency Action has been made on the Idaho Department of Water Resources at the time of the filing of this Petition.

STANDARD OF REVIEW

13. The agency's erroneous conclusions of law may be corrected on appeal. Greenfield Village Apartments v. Ada County, 130 Idaho 207, 209, 938 P.2d 1245, 1247 (1997); citing Love v. Board of County Comm'rs of Bingham County, 105 Idaho 558, 671 P.2d 471 (1983); St. Joseph Regional Medical Center v. Nez Perce County Commissioners, 134 Idaho 486, 488, 5 P.3d 466, 468 (2000). Such review on questions of law are de novo.

BACKGROUND

14. On January 14, 2005, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (collectively referred to as the "Surface Water Coalition") filed a petition (as to water rights located outside Water District 120) and letter (as to water rights located inside Water District 120) with Respondent seeking administration and curtailment of diversions through wells diverting ground water from the Eastern Snake Plain Aquifer ("ESPA"), junior in priority to water rights held by or for the benefit of Surface Water Coalition (the "Surface Water Coalition Call").

15. The water rights forming the basis for the Surface Water Coalition call included water rights held by the United States Bureau of Reclamation ("USBR") in American Falls Reservoir under water rights Nos. 01-284; 01-2064; 01-2068; 01-4052; 01-4055; 01-4056; 01-4057; 01-10042; 01-10043; 01-10044; 01-10045; and 01-10053. The Surface Water Coalition claimed contractual rights for the delivery of water from American Falls Reservoir under these water rights held by the USBR.

16. On February 11, 2005, Idaho Power filed a letter with regard to the Surface Water Coalition call inside Water District 120 supporting the Surface Water Coalition's call, and requesting that the February 11, 2005, letter be treated as a Motion to Intervene should a contested case be initiated in response to the Surface Water Coalition Call. The letter stated Idaho Power's interest in American Falls Reservoir and in other water rights held by Idaho Power throughout the Snake River Basin, and Idaho Power's interest in the proceeding.

17. On February 14, 2005, Idaho Power filed a Petition to Intervene with regard to the

Surface Coalition call outside Water District 120 supporting the Surface Water Coalition's call. The Petition stated Idaho Power's interest in American Falls Reservoir and in other water rights held by Idaho Power throughout the Snake River Basin, and Idaho Power's interest in the proceeding.

18. On February 14, 2005, Respondent issued an interlocutory order designating certain portions of the Surface Water Coalition Call as contested cases and providing that the Respondent would "make a determination of injury" in response to the Surface Water Coalition Call. The Order was designated "In the Matter of Distribution of Water to Various Water Rights Held by or For the Benefit of A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company." The Order treated both the Surface Water Coalition call inside Water District 120 and the Surface Water Coalition call outside Water District 120 as one matter. All subsequent orders of the Respondent likewise treated the two calls as one matter.

19. On March 7, 2005, the U.S. Bureau of Reclamation ("USBR") filed a Petition to intervene in the Surface Water Coalition Call. USBR's Petition stated as the basis for its interest in the proceedings, USBR's interest in American Falls Reservoir, including water rights Nos. 01-284; 01-2064; 01-2068; 01-4052; 01-4055; 01-4056; 01-4057; 01-10042; 01-10043; 01-10044; 01-10045; and 01-10053.

20. On April 6, 2005, Respondent issued an order denying Idaho Power's petitions to intervene, and granting petitions to intervene by USBR and the Idaho Dairymen's Association.

21. On April 19, 2005, Respondent issued an Order in response to the Surface Water

Coalition call. Among other things, the Order found that ground water in the ESPA, from which junior wells subject to the Surface Water Coalition call had been pumping, is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. The Order found that ground water pumping from the ESPA has a depletionary effect on surface flows in the Snake River. The Order found that the effect of ground water depletions can reduce the amount of water in storage in American Falls Reservoir. The Order found that material injury to the water rights of the Surface Water Coalition from depletions by junior ground water pumping in the ESPA, including injury to reservoir storage in American Falls Reservoir, was reasonably likely. The Respondent based his determination of injury, in part, on his calculation of the amount of water in storage and his determination of "reasonable carryover" storage that he determined was appropriate for American Falls Reservoir. The Order required junior groundwater users to provide replacement water to the Surface Water Coalition or curtail junior groundwater pumping. The Director based his order on runs and studies of the state's groundwater model.

22. On May 2, 2005, Respondent issued an order amending the April 19, 2005, Order, which made certain revisions to the April 19, 2005 Order. The basic thrust of the Orders remained the same. The Order provided that "any person aggrieved by this decision shall be entitled to a hearing before the Director to contest the action taken provided the person files with the Director . . . a written petition stating the grounds for contesting the action and requesting a hearing."

23. Idaho law and IDWR procedural rules provide that "any person aggrieved by any action of the director" may file a written petition requesting a hearing. Idaho Code § 42-

1701A(3); IDAPA 37.01.01.740 (emphasis added).

24. Petitions for hearing on the Respondent's May 2, 2005 Order were timely filed by the Surface Water Coalition, Idaho Dairymen's Association, City of Pocatello, Idaho Groundwater Appropriators, J.R. Simplot Company, State Agency Ground Water Users, and the USBR. Among other grounds, the USBR asserted in its Petition that the May 2, 2005, Order adversely affected USBR's ability to store and deliver water from its reservoirs for multiple purposes, including irrigation and power.

25. On May 17, 2005, Idaho Power also timely filed a Petition for Hearing on the May 2, 2005, Amended Order. In its Petition for Hearing, Idaho Power alleged among other things that it was an "aggrieved party" allowed to participate in the Surface Water Coalition Call matter because it holds water rights, contract rights and entitlements to water at American Falls Reservoir, all of which are adversely affected by the Respondent's May 2, 2005, Amended Order.

26. Idaho Power holds a contract right and entitlement for delivery of a portion of Water Rights Nos. 01-02064 and 01-04052, pursuant to a June 15, 1923, agreement with the United States. U.S. Contract 11r – 733, attached as EXHIBIT A. The 1923 American Falls contract entitles Idaho Power to the use of 45,000 acre-feet of primary storage capacity and 255,000 acre-feet of secondary storage capacity in American Falls Reservoir, for delivery to Idaho Power facilities in the Snake River both above and below Milner.

27. In its Petition, Idaho Power specifically referenced and attached its contract for the delivery of water from American Falls Reservoir and asserted its interest in the water rights held by the USBR, which the Respondent had specifically found at issue in the proceeding,

including water rights Nos. 01-02064 and 01-04052. Among other things, Idaho Power asserted that the May 2, 2005 Order failed to adequately compensate for injury to its rights in American Falls Reservoir and other water rights in the Snake River Basin, and adversely affected the ability of Idaho Power to exercise calls in the future for the protection of its water rights. Idaho Power set forth numerous grounds for contesting the action of the Director in his Order, including the adequacy of the state's ground water model, which served as the basis of the Director's Order, and which will serve as the basis for future orders of the Director concerning the administration of ground water in the ESPA.

28. In its Petition, Idaho Power also alleged that it held water rights, contract rights and entitlements to water at the American Falls Reservoir which are identical to the rights held by USBR, and that because USBR had already been allowed intervention in the Surface Water Coalition Call matter Idaho Power must also logically be allowed to participate.

29. At a pre-hearing conference on June 15, 2005, Respondent sua sponte raised the issue of whether Idaho Power was entitled to file its Petition for Hearing.

30. On June 16, 2005, Respondent issued an Order directing all parties to brief the issue of Idaho Power's status in the Surface Water Coalition Call matter.

31. On June 22, 2005, USBR filed a brief in support of Idaho Power's standing to participate as a party in the Surface Water Coalition Call matter. USBR's brief acknowledged Idaho Power's contractual entitlement to storage water in American Falls Reservoir, and recognized Idaho Power's interest in the factual and legal questions raised of first impression in the proceeding, the determinations on which by the Director may be applied with respect to Idaho Power's interests.

32. On June 22, 2005, the Idaho Ground Water Association ("IGWA") and the State Agency Ground Water Users ("SAGWU") filed briefs in opposition to Idaho Power's standing to participate as a party in the Surface Water Coalition Call matter.

33. On June 29, 2005, Idaho Power filed a combined reply to the briefs filed by IGWA and SAGWU, arguing that Idaho Power had demonstrated that it was an aggrieved party, that it had water rights that were adversely affected by the Respondents Order and Amended Order of April 19, 2005, and May 2, 2005 respectively, and that in any case it had demonstrated the same interest in water rights as a party to the Surface Water Coalition Call matter.

34. On July 22, 2005, Respondent issued an Order denying Idaho Power's Petition for a Hearing as an aggrieved party.

35. Respondent's Order of July 22, 2005, states that Idaho Power exhausted its administrative remedies with respect to the issue of whether it is an aggrieved party entitled to a hearing.

FIRST CLAIM FOR RELIEF

(Respondent's Order Violates Constitutional and Statutory Provisions)

36. Idaho Power repeats the allegations of paragraphs 1 through 35, inclusive, as if set forth fully herein.

37. Respondent's Orders of February 14, 2005; April 6, 2005; April 19, 2005 and May 2, 2005, recognize that Water Rights Nos. 01-02064 and 01-04052 at American Falls Reservoir are directly at issue in this proceeding and confer standing upon parties with an interest in those rights.

38. Respondent's own statements concede that these interests in water confer standing on USBR. See May 2, 2005, Order, Conclusions of Law, Paragraph 15, Page 34.

39. Idaho Power owns property interests that are injuriously affected by the legal and factual findings in the May 2nd Order, and on that basis is an aggrieved party.

40. Accordingly, Respondent's July 22, 2005, Order violates constitutional and statutory provisions entitling Idaho Power to a hearing before the Respondent

SECOND CLAIM FOR RELIEF

(Respondent's Order Was Not Supported by Substantial Evidence on the Record)

41. Idaho Power repeats the allegations of paragraphs 1 through 40, inclusive, as if set forth fully herein.

42. Respondent's Orders of February 14, 2005; April 6, 2005; April 19, 2005 and May 2, 2005, recognize that Water Rights Nos. 01-02064 and 01-04052 at American Falls Reservoir are directly at issue in this proceeding and confer standing upon parties with an interest in those rights.

43. Idaho Power demonstrated an interest in these water rights, and there was no evidence to the contrary before the Respondent.

44. Respondent's own statements concede that these interests in water confer standing on other parties to the Surface Water Coalition Call matter. See May 2, 2005, Order, Conclusions of Law, Paragraph 15, Page 34.

45. Accordingly, Respondent's July 22, 2005, Order is not supported by substantial evidence on the record.

THIRD CLAIM FOR RELIEF

(Respondent's Order is Arbitrary, Capricious and an Abuse of Discretion)

46. Idaho Power repeats the allegations of paragraphs 1 through 45, inclusive, as if set forth fully herein.

47. Respondent granted party status to other similarly situated parties.

48. Respondent conceded that parties with rights directly at issue in the matter, and substantially identical to Idaho Power, were entitled to participate in the proceedings.

49. Respondent ignored the clear evidence of Idaho Power's water rights in the record, and did not cite any evidence to the contrary, in denying Idaho Power's request for a hearing.

50. Accordingly, Respondent's denial of Idaho Power's request for a hearing as an aggrieved party was arbitrary, capricious, and an abuse of discretion.

WHEREFORE, Idaho Power prays that this Court:

- A. Enter judgment in favor of Idaho Power and against the Respondent with respect to Idaho Power's claims;
- B. Set aside Respondent's July 22, 2005, Order in whole;
- D. Remand the matter to Respondent with directions that Idaho Power is an aggrieved party with standing to participate in the Surface Water Coalition Call; and
- F. Award such other and further relief which this Court deems just and equitable.

Dated this 19th day of August, 2005.

IDAHO POWER COMPANY

By: 

James C. Tucker, Esq.

Senior Attorney, Idaho Power Company

and

James S. Lochhead, Esq.

Adam T. DeVoe, Esq.

Brownstein Hyatt & Farber, P.C.

410 17th Street

Twenty-Second Floor

Denver, CO 80202

EXHIBIT A

1. THIS AGREEMENT, Made this 15 day of
2. June, 1923 in pursuance of the Act of Congress
3. of June 17, 1902, (32 Stat., 388) and acts amendatory
4. thereof or supplementary thereto, between THE UNITED STATES
5. OF AMERICA, hereinafter styled the United States, acting
6. for this purpose by Hubert Work
7. Secretary of the Interior, and the IDAHO POWER COMPANY, a
8. corporation organized under the laws of the State of Maine
9. and authorized to do business in the State of Idaho, and
10. having its principal place of business at Boise, Idaho,
11. hereinafter styled the company, its successors and assigns.

2. Purpose and Plans of United States.

12. WHEREAS, the United States contemplates the con-
13. struction of a large reservoir at American Falls, Idaho, to
14. store the flood water and winter flow of Snake River and
15. make the same available for the reclamation of large areas
16. of public lands of the United States including the North
17. Side Pumping Division of the Minidoka Project and other por-
18. tions of the Snake River Valley, and to supplement the water
19. supply of various projects in the Snake River Valley now
20. having an inadequate or insufficient water supply during
21. part of the irrigation season. And

3. Company Public Service Corporation.

22. WHEREAS, the company is a public service corpor-
23. ation furnishing electricity throughout the Southern por-
24. tion of the State of Idaho for light, heat, and power and
25. irrigation purposes. And

4. Interference with Rights of Company.

26. WHEREAS, said electricity is, to a large extent, gen-
27. erated by the company in hydro-electric plants owned by it
28. and located on the Snake River at American Falls and various
29. points below and the water which it uses and claims for use
30. at American Falls is or would be also used, to a large extent,
31. in its plants located and to be located at points below on
32. the stream, so that the storing by the United States of win-
33. ter flow at American Falls will interfere with certain power
34. and other rights of company at American Falls and points be-
35. low and

5. Use of Property Owned by Company.

36. WHEREAS, a portion of said proposed American Falls dam
37. and reservoir will be located on land owned by the company
38. and the construction and operation of the same will also make
39. necessary the destruction of or interfere with certain gener-
40. ating stations and other property of the company; and

6. Company's Prior Filings at American Falls.

41. WHEREAS the company has at American Falls water filings
42. prior to the American Falls filings of the United States
43. sufficient to embrace the entire amount of water reserved

44. to the company under this contract.

7. Need of United States for Power.

45. AND WHEREAS, the said proposed North Side Pumping
46. Division of the Minidoka Project of the United States is a
47. pumping project and the United States will require in con-
48. nection with the said project a large power plant for the
49. development of a large amount of electric power for pump-
50. ing water upon the lands of the said project.

8. Mutual Covenants.

51. NOW, THEREFORE, WITNESSETH: That for and in con-
52. sideration of the covenants and agreements of the par-
53. ties herein, upon the conditions herein named, the par-
54. ties covenant and agree:

9. Property to be Conveyed to United States.

55. The Company hereby agrees, upon the terms and condi-
56. tions hereinafter stipulated, to sell and by good and
57. sufficient deed convey to the United States of America,
58. free of tax liens and of liens or incumbrances created,
59. granted or imposed by itself or its public utility pred-
60. ecessors, all its right, title and interest in and to the
61. following described real estate, situated in the counties
62. of Power and Bingham, State of Idaho, to-wit: (a) The pro-
63. perty described in the list of land descriptions hereto
64. attached as Exhibit "A" and made a part of this contract;
65. and any other real property owned by the company, if any
66. such there be, under the proposed dam or reservoir to be

67. constructed by the United States in connection with the
68. American Falls Reservoir project; the said proposed dam
69. to be located and constructed upstream from the company's
70. American Falls Dam as now constructed and north of the
71. right of way of the Oregon Short Line Railroad Company's
72. bridge property as now located at American Falls; the ti-
73. tle to be conveyed to the United States in all cases to be
74. as full and complete a title as the company has, Provided,
75. however, that to the extent hereinafter expressly provided
76. and to no greater extent than hereinafter expressly
77. provided, and subject to all the terms, conditions and
78. provisions hereinafter set out, the Company shall have and
79. there is reserved to the Company, the right to store the
80. water which it is to receive from the Proposed American Falls
81. Reservoir, upon that part of the property and rights describ-
82. ed in Paragraph 9, located within the reservoir, and agreed
83. to be conveyed by the Company to the United States insofar
84. as such reservation to the Company does not conflict with any
85. of the rights hereinafter granted or agreed to be allowed to
86. the United States or any of the limitations or restrictions
87. hereinafter agreed to be placed upon the rights of the Company.

88. (b) The two power plants at American Falls known as
89. the Island Power plant and the West Side Plant, except as to
90. the water rights otherwise provided for in this contract to-
91. gether with the following described tracts of land on which
92. said plants are located, to-wit:

93. The following described parcel of land situated in
94. Lot 5 Sec. 31, T. 7 S., R. 31 E., B. M., beginning at a
95. point on the low-water line, on the West bank of Snake
96. River where the continuation (in a straight line) of
97. the North boundary line of lot five of section thirty-one
98. Township seven south of Range thirty-one east of Boise
99. Meridian, would intersect the said low-water line on the
100. West bank of Snake River; thence west along said north
101. boundary line of said lot five for a distance of 211.5 feet
102. to a stake on the south boundary line of the right of way
103. of the Oregon Short Line Railroad; thence westerly along
104. the south boundary line of said right of way, for a distance
105. of 270 feet to a stake; thence South $43^{\circ} 14'$ East for a
106. distance of 386 feet; thence due East to the intersection
107. of the low-water line on the west bank of Snake River;
108. thence along the low-water line on the said west bank of
109. said Snake River, following the meandering thereof, to the
110. point of beginning, containing about two acres, more or less,
111. reserving to the Company from said property in said lot five,
112. rights of way and easements for occupancy and use by the
113. Company for the purpose of erecting, operating and maintaining
114. electric transmission lines, and structures and equipment
115. appurtenant thereto for substation, sectionalizing and switch-
116. ing purposes, said rights of way and easements, including
117. the right of ingress and egress over the property of the
118. United States, to be located as mutually agreeable to the

Tract C

119. United States and the Company.

20. Also the following described piece or parcel of

21. land situated in Lot 12 of Section Thirty (30) Town-

ip Seven (7) South, Range Thirty-one (31) East of the

ise Meridian, commencing at a point on the west bank

the Snake River where the easterly boundary line of the

ent of way of the Oregon Short Line Railroad Company

said bank of Snake River; thence running

of said Snake River in a southerly direction

feet; thence in a straight line in

to the intersection of the east bound-

ad company's right of way one hundred

thence along the easterly bound-

ent of way to the place of be-

lled tract of land lying in

and 12, of

at a point

re original

ndary of

Tract B

144. direction along the east boundary of said Lot 12 to the
145. southeast corner of said Lot 12; thence in an easterly di-
146. rection along the south boundary of said Sec. 30 to a point
147. where a due north and south line, through a point 25 feet
148. due east from the southeast corner of what is known as the
149. Island Plant power house belonging to the Company, intersects
150. the south boundary of said Sec. 30; thence due north to the
151. center line of the Oregon Short Line Railroad as now located;
152. thence in a straight line in a north-westerly direction to
153. the point of intersection of the east toe of the intake to
154. the said Island Plant with the downstream toe of the company's
155. American Falls dam; thence along the toe of the east face of
156. the east pier or abutment wall of the headworks of said Island
157. plant to the upstream toe of the company's said American Falls
158. dam; thence southeasterly along the upstream toe of that por-
159. tion of the company's said American Falls dam which the com-
160. pany will retain to the easterly toe of the division dam to be
161. constructed by the United States between the westerly end of
162. that portion of the company's dam which the company will retain
163. and the government's proposed American Falls reservoir dam (re-
164. ferred to in Paragraph 15 of this agreement); thence in a straight
165. line in an easterly direction to the point of beginning, and
166. all rights of the Company in the tailrace from said Island and
167. West Side plants; and the United States shall have and there
168. is granted to the United States the right of ingress and egress

169. for pedestrian traffic over the Company's wood-steel
170. bridge leading from the east bank of Snake River to the
171. said Island Plant, so long as said bridge may be maintained
172. by the Company, reserving to the Company, and the Company
173. shall have the right and easement of junction, tie, abutment
174. and support of the portion of the Company's American Falls
175. dam to be retained by it to the portion of said dam to be
176. conveyed to the United States and to the headworks of
177. said Island Plant and to said division dam to be construct-
178. ed by the United States between the portion of the Company's
179. dam to be retained by it and the Government's proposed
180. American Falls reservoir dam; reserving further to the Com-
181. pany the west portion of the Company's dam as described
182. and with the limitations contained in paragraph 9 (c), and
183. reserving further to the Company and the Company shall have
184. the right and easement of junction, tie, abutment and sup-
185. port of the Company's said wood-steel bridge upon the pro-
186. perty adjacent to said Island Plant; and reserving further
187. to the Company and the Company shall have the rights and
188. easements of flowage and pondage on and over the premises
189. conveyed to the United States under this agreement and ly-
190. ing south of the down stream toe of the Government's proposed
191. American Falls dam and east of said proposed division dam
192. and the headrace or works of said Island Plant for the pur-
193. pose of utilizing the Company's water rights and rights to
194. the use of water; and further reserving to the Company, and

195. the Company shall have the easement and right to waste
196. and discharge such water over said lands lying south of
197. the downstream toe of the Government's proposed American
198. Falls dam and east of said division dam and the head race
199. or works of said Island plant, and through and over the
200. Company's American Falls dam and works and along and against
201. the works and property of the United States. The Company
202. agrees to so maintain and operate the said power plants
203. and other structures to be conveyed to the United States
204. until delivery of possession thereof to the United States
205. that the same will be delivered to the United States in
206. as good condition as they now are, ordinary wear and
207. tear and any damage directly or indirectly caused by
208. the United States excepted, Provided, however, that
209. should the company on account of any extraordinary
210. accident or calamity be unable to deliver such plants in
211. such condition, it shall have the option to deliver them
212. as they then are and shall furnish to the United States
213. free of charge as demanded by the officer of the United
214. States in charge of said American Falls Reservoir the
215. equivalent output of power of such plants minus the amount
216. of power which may actually be developed at these plants
217. by the United States - such power to be delivered on the
218. generator voltage bus of the Island plant and such deliv-
219. ery to terminate on April 1st, 1928. The power developed
220. at said West Side and Island Plants or delivered by the

221. company under this subdivision shall after the delivery
222. of the deeds provided for in subdivision (d) hereof be
223. considered a part of and not in addition to the power
224. right otherwise defined to be in the United States under
225. the terms of this agreement.

226. (c) The property described in Exhibit "B" attached
227. hereto and made a part hereof; and the west portion of
228. the present dam and spillway at American Falls up to and
229. including the intake to the Island plant, reserving, how-
230. ever, to the company all and every of the rights it now
231. has to use, maintain and operate said property in connec-
232. tion with the use, maintenance and operation of its East
233. Side plant, until such time as the United States has con-
234. structed the division dam in accordance with the provisions
235. of Paragraph 15 hereof and has made the provision for the
236. discharge of water into the pool between the government's
237. proposed American Falls reservoir dam and the Company's
238. East Side plant in compliance with the terms of said Para-
239. graph 15, Provided that the United States shall, after
240. making second payment have the right to demolish such por-
241. tion of the present dam and spillway at American Falls west
242. of the Island plant intake as may be necessary for the con-
243. struction of the proposed government power plant and other
244. works at American Falls, providing that by so doing no in-
245. terference is had with the operation of the Company's East
246. Side Plant.

247. (d) All the company's water rights, appropriations
248. water filings and permits, at American Falls, or used or
249. intended to be used in connection with the company's power
250. plants and proposed plants at American Falls, except the
251. rights, whether primary or tertiary, expressly reserved
252. to the company, as hereinafter set out. The water rights
253. of the company transferred to the United States for use
254. for power purposes shall be considered as impressed with
255. a right in the United States to change the use of such
256. water from power to irrigation or to store the same for
257. irrigation whenever the Secretary of Interior shall decide
258. that such water is required for irrigation purposes. But
259. it is expressly agreed and understood that the water rights
260. and rights to the use of water which it is herein agreed
261. that the Company shall have are reserved out of its exist-
262. ing appropriations and rights as independent rights under
263. its own filings and appropriations and of the dates of prior-
264. ity to which the Company is entitled under such appropria-
265. tions and are not to be considered as mere contract rights
266. under contract with the United States.

267. (e) The right to limit all other rights of the company
268. on Snake River at whatever points and in whatever counties
269. the same may be located insofar as and no farther than the
270. rights allowed and granted to the United States to store
271. and use water as herein provided may interfere with any
272. rights of the company at any lower points on Snake River.

10. Company's Primary Summer Power Right.

274. It is agreed and understood that the company reserves
275. and it shall have as against the United States and those
276. claiming or that may hereafter claim under them, the first
277. or primary right at American Falls to use for power purposes
278. at American Falls the following amounts of water during the
279. following periods of each year:

280. 100 second-feet beginning April 1st, increasing uniform-
281. ly to 2500 second-feet on May 1st, and continuing at that
282. amount to September 15th inclusive, then decreasing uniform-
283. ly to 100 second-feet on October 31st and none except as
284. hereinafter provided from November 1st to March 31st inclusive.

285. The above described power right so reserved to the com-
286. pany shall be considered as prior and superior to all other
287. rights at American Falls. The company may also have a pri-
288. mary right to use at any time any water brought to American
289. Falls by it from beyond the Snake River water shed, or any
290. stored water acquired by the company from storage capacity
291. hereafter constructed above American Falls provided that it
292. is understood and agreed that the company's right to store
293. water, except water brought by the company from beyond the
294. Snake River watershed, in such capacity above American Falls
295. shall be inferior and subordinate to the right of the United
296. States to provide for building and to fill and use 3,000,000
297. acre-feet of storage capacity, including the capacity of the
298. American Falls Reservoir, anywhere on Snake River, in addition
299. to the storage capacity now available in Jackson Lake Reser-
300. voir and Lake Walcott.

11. Government's Summer Power Right at American Falls.

301. The United States shall have and the company here-
302. by grants to the United States as against the company
303. a secondary power right at American Falls to that amount
304. of water which will generate continuously for delivery
305. from the generator bus bars in the Government power
306. station at American Falls 6,700 kilowatts beginning
307. on April 1st, increasing uniformly to 25,000 kilowatts
308. on May 1st and to 30,000 kilowatts on June 1st, contin-
309. uing at that amount to August 15th, inclusive, then de-
310. creasing uniformly to 25,000 kilowatts on September 15th,
311. and to 5,500 kilowatts on October 31st, and none from No-
312. vember 1st to March 31st inclusive, except in connection
313. with the 10,000 kilowatts as authorized in Paragraphs
314. 24 and 19 hereof. In no case, however, except as auth-
315. orized by Paragraph 13, shall the water utilized under
316. this power right exceed 1,500 second-feet on April 1st,
317. increasing uniformly to 5,000 second-feet on May 1st,
318. and to 6,000 second-feet on June 1st, continuing at that
319. amount to September 15th inclusive, and decreasing uni-
320. formly to 1,500 second-feet on October 31st. The secondary
321. power right granted to the United States under this paragraph
321a. shall be inferior and subordinate to the primary power right
321b. reserved to the company in paragraph 10 hereof, and shall be
321c. prior and superior to all power rights of the company at Am-
321d. erican Falls other than the rights reserved under Para. 10 hereof
321e. and the right to the storage provided in Para. 19, Provided

322. however, that if the Company, through the refusal, for
323. any reason, of the United States or its successors in
324. control of said reservoir to comply with the terms of
325. this agreement, fails to receive for its own use at its
326. plants at American Falls, unless its right to such water
327. has been taken under the power of eminent domain, the
328. amount of water and at the times and in the manner com-
329. templated by this agreement, it shall have the right to
330. make up such deficiency (during the time of such refusal
331. and no longer) out of the appropriations, water filings
332. and permits which it now holds, and the amount which the
333. United States shall have the right to store or use out of
334. said appropriations, shall be reduced accordingly. It is
335. agreed and understood that errors or inaccuracies in the
336. release or delivery of water from the reservoir shall not
337. be construed as a refusal by the United States to comply
338. with the terms of this agreement. Nothing contained in
339. this contract shall be construed to make the United States
340. in any way responsible for the delivery of the water to any
341. of the plants of the Company after the same has been re-
342. leased by the United States for the Company from the res-
343. ervoir at American Falls.

12. Company's Additional Summer Power Right.

344. The company reserves and shall have as against the
345. United States a tertiary power right at American Falls to
346. all additional water released or wasted from the reservoir

347. as released or wasted by the United States from April 1st
348. to October 31st inclusive over and above the amounts re-
349. quired to furnish the primary rights reserved to the com-
350. pany in paragraph 10 hereof, and the secondary right grant-
351. ed to the United States under Paragraph 11 hereof.

352. Should the company fail for five years after a storage
353. capacity of 1,500,000 acre feet or more has been provided at
354. American Falls, to make provision to utilize all the ter-
355. tiary power provided in Paragraph 12, then the United States
356. shall become entitled as against the company to develop and
357. use any unused portion thereof, but should the United States
358. fail, for a period of three years after becoming vested
359. with the right to develop and use such undeveloped portion
360. of said tertiary power, to make provision to utilize the
361. same then thereafter either party may by making such pro-
362. vision become entitled to utilize such undeveloped portion
363. of said tertiary power right.

13. Substitution of Acre-feet for Second-feet.

364. During the period from April 1st to October 31st in-
365. clusive, either party may take instead of the continuous
366. flow specified above in Paragraphs 10 and 11 an equivalent
367. amount of water each day in varying amounts during various
368. hours of the day, providing the number of acre-feet taken
369. by either party during any one day of twenty-four hours
370. shall not exceed a number double the number of second-feet
371. specified in the above schedules in Paragraphs 10 and 11

372. for such day.

14. Company's Summer Regulation of 5,000 Acre-foot.

373. The company may accumulate from time to time in stor-
374. age capacity that would otherwise be unused in the American
375. Falls reservoir out of the amounts of water to which it is
376. entitled under Paragraph 10, an amount not exceeding 5,000
377. acre-foot, and use the same as desired, except that after the
378. reservoir has been filled in any year, the company shall be
379. entitled under this paragraph only to that part of the 5,000
380. acre feet accumulated after the filling of the reservoir and
381. subject to the limitation of maximum delivery and gate or
382. outlet capacity herein provided, and provided further that
383. the company shall release upon demand by the United States
384. such portion of the said 5,000 acre feet as the company may
385. have accumulated whenever the available stored water in the
386. American Falls Reservoir to which the present Minidoka pro-
387. ject and extensions thereof diverting from Lake Walcott are
388. entitled amounts to less than 5,000 acre-feet, and in any
389. event release all claim to any part of said 5,000 acre-feet
390. of accumulated water remaining after September 30th.

15. Outlet Works and Division Dam for Company.

391. The United States will provide for the company in the
392. proposed dam to be constructed by the United States discharge
393. works sufficient for a 6,000 second-feet delivery with a
394. loss of head not to exceed two feet. Such discharge works
395. shall discharge into the pool between the proposed reservoir

396. dam and the company's east side plant and shall be as low
397. as and similar to the outlets connecting with the power
398. plant to be constructed by the United States, and shall
399. be so constructed that the company may and is given the
400. right to attach its penstocks directly thereto and shall
401. be provided with protecting devices similar to these to be
402. provided for the intakes to the proposed Government power
403. plant at American Falls. The United States shall construct
404. and maintain as a part of the American Falls storage dam,
405. a division dam between the westerly end of that portion of the com-
406. pany's American Falls dam which the company will retain, and the
407. Government's proposed American Falls Reservoir dam to an
408. elevation five feet above the present concrete crest of
409. company's dam, and of sufficient strength to retain the
410. water on the easterly side up to the crest of said dam, and
411. provision shall be made whereby the Company shall not be
412. required during any flood to discharge over that portion
413. of the company's American Falls dam and spillway retained
414. by the company any greater portion of the flood than would
415. have been discharged over that portion retained had said
416. dam and spillway not been changed from its present condition.

16. Company's Primary Storage Capacity.

417. In part consideration for the rights and property to
418. be conveyed to the United States by the company, and as a
419. part of the cost of the proposed development at American
420. Falls the United States grants to the company and the com-

421. pany shall be entitled to the perpetual use of 45,000
422. acre-feet of storage capacity in the reservoir to be con-
423. structed by the United States, such capacity to be for
424. storing the water reserved to the company, and the water
425. referred to in the last sentence of Paragraph 10, the
426. company's right to such storage capacity to be on an equal
427. basis in all respects, except as otherwise provided herein,
428. with other primary storage capacity rights in the reservoir,
429. as defined in the contracts between the United States and
430. the Irrigation Companies and Districts cooperating with the
431. United States in the construction of said reservoir, a form
432. of which contract is attached hereto and marked Exhibit "C".

17. Operation and Maintenance Charges.

433. For the purpose of determining the operation and main-
434. tenance charge to be paid by the company, each acre-foot of
435. secondary storage capacity provided for in Paragraph 18 shall
436. be considered as the equivalent of $7/20$ (seven-twentieths)
437. of an acre-foot of primary storage capacity and the company
438. will pay to the United States each year a proportionate part
439. of the total cost of operation and maintenance of the reser-
440. voir, and distribution of the waters therefrom to the head
441. of the ditches and to the power plants of the company di-
442. verting water from Snake River below said reservoir in the
443. proportion that 134,250 acre-feet is of the total available
445. capacity of the reservoir plus 89,250 acre-feet, the times,
446. conditions, and manner of billing or stating such charge to

447. the company and of paying the same to the United States
448. to be the same as provided in the contracts between the
449. United States and the various irrigation companies and dis-
450. tricts cooperating in the construction of said reservoir.

18. Company's Secondary Storage Capacity.

451. Between October 1st of any year and June 10th of the
452. following year, the company shall have and is hereby grant-
453. ed for the purpose of regulating and controlling the water
454. reserved to the company under Paragraph 19 hereof, and the
455. water which may be acquired under the last sentence of Par-
456. agraph 10, a secondary right to use not to exceed 255,000
457. acre-feet of storage capacity in the reservoir when such
458. capacity is not then required and not being used by the
459. owners of irrigation rights to the use of such capacity,
460. but shall have no further right to use any part of said
461. 255,000 acre-feet of capacity or any water stored therein
462. after the reservoir is first filled each season, and the
463. company shall in any event release on April 1st of each
464. year all right and claim to such capacity and water stored
465. therein, except 60,000 acre-feet, and shall release all right
466. and claim to the remainder, if any, on June 10th of each year.

19. Company's Reserved Water Right of 300,000 Acre-feet.

467. It is agreed that in addition to the primary right re-
468. served in Paragraph 10, the company reserves and shall have
469. the right (for power development at American Falls and to
470. such extent as provided in Paragraph 21 hereof for power
471. development at points below Milner) to 300,000 acre-feet

472. of water flowing into the reservoir after October 1st of
473. any year which shall be the first 300,000 acre-feet flow-
474. ing into the reservoir after October 1st and actually
475. storable therein, except that precedence shall be given
476. for the release through the American Falls Reservoir dam
477. to the amount of water, if any, required to supply the a-
478. mount of power not exceeding 10,000 kilowatts, half-hour
479. peak, needed to supply the power demands and uses on the
480. Minidoka Project and its proposed extensions, and including
481. the town of Minidoka and the territory now supplied by the
482. United States, and the camps, buildings, construction work,
483. dam and adjacent grounds of the United States at American
484. Falls but not elsewhere in the old or new town of American
485. Falls, except that if the company should refuse to extend
486. its lines into the new or government townsite at American
487. Falls and furnish service in such townsite, then the United
488. States may do so. The extension of power lines into the
489. new townsite and furnishing of power to customers therein
490. shall not be construed as waiving any of the rights of
491. either party as to the amount of damage which may be al-
492. lowed the company in condemnation or otherwise for the
493. removal of the old town or otherwise, Nothing in this
494. paragraph contained shall be construed to deny the United
495. States the right to store and use for irrigation purposes
496. the water herein authorized to be used for the generation
497. of said winter power of not exceeding 10,000 kilowatts.

498. half-hour peak, whenever the Secretary of the Interior
499. shall decide that such water is required
500. for irrigation purposes. The expression "10,000 kilowatts,
501. half-hour peak", wherever it occurs in this contract shall
502. be interpreted as meaning that the average for any half-
503. hour interval must not exceed 10,000 kilowatts.

20. Company Right to Primary Storage Water.

504. The water required to fill the 45,000 acre-feet of
505. primary storage capacity allowed the company under Para-
506. graph 16 hereof shall be a part of the 300,000 acre-feet
507. of water reserved to the company under Paragraph 19 hereof,
508. and the company shall have no right to require the turning
509. out for the company of more than 300,000 acre-feet in any one
510. year beginning October 1st in addition to the primary rights
511. set forth in Paragraph 10 and the holdover authorized in
512. this paragraph. The company shall have the privilege of
513. holding after October 1st and until November 15th any water
514. which it may have remaining in its own storage capacity of
515. 45,000 acre-feet, but the company's right shall expire on
516. November 15th to any amount so held over beyond that date.

21. Company's Rights below Milner Dam.

517. The company's right to demand the turning out of water
518. from the reservoir for release by and use below Milner Dam
519. shall be limited to the 45,000 acre-feet of primary storage
520. rights, the water referred to in the last sentence of Para-
521. graph 10, and to such portion of the 255,000 acre foot men-

522. tioned in Paragraph 18 as is needed for beneficial use for
 523 power development at Shoshone Falls or Twin Falls but not
 524. exceeding the amount that may be necessary to make the to-
 525. tal flow at the head of Shoshone Falls:
 526. 790 second-foot - October 1st to November 30th, incl.
 527. 890 " " - December 1st to January 31st, "
 528. 790 " " - February 1st to February 12th, "
 529. 690 " " - February 13th to April 15th, "
 530. 790 " " - April 16th to June 10th, "
 531. exclusive of any part of the company's said 45,000 acre-foot
 532. of primary storage and the water referred to in the last
 533. sentence of Paragraph 10.
 534. Provided, however, that the amount of water released
 535. past Milnor for maintaining the flow at Shoshone Falls be-
 536. tween October 1st and June 10th inclusive, as listed above,
 537. shall be a part of the 255,000 acre-foot of primary storage
 538. water which the Company may have stored in its secondary
 539. storage capacity in the reservoir, and provided that it re-
 540. leases such water from the American Falls Reservoir in such
 541. a way that the required flow can be maintained at Shoshone
 542. Falls by the utilization of storage capacity in Lake Walcott not
 543. to exceed 3,000 acre-foot of storage capacity.
 544. Nothing in this paragraph is to be construed as abridg-
 545. ing the Company's right to release from the Reservoir and
 546. have passed by Milnor at any time any part of its 45,000
 547. acre-foot of primary stored water stored in its primary
 548. storage capacity, or hold over as provided for in Paragraph
 549. 20.

22. Twin Falls Power Site.

550. Should the company construct a power plant at Twin
551. Falls, then the flow to be maintained below the Milnor dam
552. shall be measured and determined at Twin Falls instead
553. of Shoshone Falls and the schedule of flow set out in the
554. foregoing paragraph shall be reduced 100 second-feet for
555. each period, but nothing herein contained shall be construed
556. as waiving any rights of the United States at Twin Falls
557. or any other power site on Snake River, owned or controlled
558. in whole or in part by the United States, or implying that any
559. license, permit or right will be granted the company.

23. Government's Winter Power Rights.

560. In securing the winter power not exceeding a half-hour
561. peak of 10,000 kilowatts provided for the United States
562. under paragraph 19 hereof, the United States shall secure
563. at the Minidoka Power plant so much of said power as it is
564. reasonably practicable to secure from the installed machin-
565. ery at said plant without releasing water which otherwise
566. might be held for irrigation, generating at American Falls
567. the balance, if any, of the amount required. Nothing here-
568. in contained shall be construed to prevent the United States
569. from obtaining the ten thousand kilowatts at its American
570. Falls plants when the Minidoka plant, is closed or out of opera-
571. tion on account of enlargement, improvement or repairs.

24. Storage Rights of United States and Winter Waste.

572. The United States shall have and the company hereby
573. grants to the United States as against the company the right

574. to store in the American Falls Reservoir for use for
575. irrigation and domestic purposes and for the power use
576. set forth in Paragraph 11 and for the development of an
577. amount of power not exceeding 10,000 kilowatts, half-hour
578. peak, as defined in Paragraph 19, all of the storable
579. water at American Falls not specifically reserved to the
580. company or granted to the company as against the United
581. States. The company reserves and as against the United
582. States shall have the right to use for power purposes at
583. American Falls water released or wasted between November
584. 1st and March 31st, inclusive, in excess of the amount
585. herein specified to be allowed to the United States for
586. power under the foregoing provisions of this contract.
587. The availability of water for waste shall be determined
588. by the U. S. Reclamation Service by assuming a year be-
589. ginning October 1st of 200,000 acre-feet less storable run-
590. off than the lowest year of record at the time of such
591. determination, and such water as under this assumption
592. is not necessary to provide 300,000 acre-feet for the com-
593. pany and to fill existing storage capacity will be consid-
594. ered available for wasting. Until some lower year is ob-
595. served the lowest year of record shall be deemed to have
596. a storable run-off of 1,500,000 acre-feet, including the
597. 300,000 acre-feet reserved to the company. The United
598. States agrees that such water as may be available for
599. waste during the winter shall be released as nearly uni-
600. formly as may be practicable, or in such other manner as

601. to secure its reasonable availability for beneficial use for
602. power development. During the development period, the com-
603. pany shall have the right to use for power purposes, until
604. demanded by the United States, the water granted to the
605. United States for power purposes, but this water shall be
606. available for use by the United States for power purposes,
607. on its demand.

25. Release of Liens.

608. The company shall secure from the trustee, or other per-
609. son or persons having power to release, and shall deliver to
610. the United States a valid release of all the property and
611. rights described in Para. 9 (a) to 9 (c) inclusive, and Para.
612. 24 from the lien of any mortgage, deed of trust or other in-
613. cumbrance created or granted by the company or its public
614. utility predecessors and a release of all tax liens.

26.. Abstract.

615. In consideration of the promises, the company further
616. agrees upon receipt of notice that this contract has been
617. signed by the Secretary of the Interior, to furnish promptly
618. at its own expense, an abstract of title which shall later be
619. extended to include any instruments subsequently recorded in
620. connection herewith, and also the record of conveyance made
621. pursuant to this agreement provided that if the company fails
622. or refuses to furnish proper abstract of title within sixty (60)
623. days after notice that this agreement has been signed, or if
624. within such period written request be made by the company,
625. such abstract may be procured by the United States at the
625a. expense of the company and the cost thereof

626. deducted from the purchase price.

27. Payments by the United States.

627. In consideration whereof the United States agrees that
628. it will purchase said property on the terms herein expressed,
629. and upon the signing of the usual Government vouchers there-
630. for and their further approval by the proper Government of-
631. ficials, it will, as full payment for the property, and
632. rights herein agreed to be conveyed to the United States,
633. and for all damages for entry upon the above described prop-
634. erty, and the construction, operation and maintenance of
635. Reclamation works under said act, and for all claims by the
636. company for surveys, examinations, opinions of experts, and
637. expenses of whatsoever kind incurred in connection with the
638. consummation of this contract, in addition to the storage
639. capacity rights herein granted to the company, cause to be
640. paid the sum of one million (\$1,000,000) Dollars in in-
641. stalments as hereinafter provided by United States Treasury
642. warrant or fiscal officer's check, which sum shall become
643. due and payable in four equal annual instalments, the first
644. of which will be due and payable after the furnishing of the
645. abstract and other evidence of title herein provided and,
646. concurrently with delivery of the deeds to the property des-
647. cribed in Paragraph 9 (a), and one instalment on the same day
648. of each year thereafter until the full amount herein spec-
649. ified has been paid. Provided that concurrently with receiv-
650. ing said second instalment the company shall deliver to the
651. United States a deed conveying to the United States all

652. the company's right, title and interest to the West Side
653. and Island plants, other than water rights except as here-
654. in otherwise provided and land described in Paragraph 9 (b)
655. and release from tax liens and other liens agreed to be
656. released in Paragraph 25 and concurrently with the receipt
657. of the third instalment, the company shall deliver to the
658. United States the deed and assignment of the properties des-
659. cribed in Paragraph 9 (c), and concurrently with the receipt
660. of the fourth instalment shall deliver the deeds and assign-
661. ments of the remainder of the property and rights herein
662. agreed to be conveyed. Provided that the company may retain
663. the possession and use of all the property herein agreed to
664. to be conveyed or assigned until the first annual instalment
665. has been paid, but that upon the payment of the first annual
666. instalment the United States may take possession of the land
667. needed for the proposed dam and reservoir as described in
668. Paragraph 9 (a), and upon payment of the second annual in-
669. stalment may take possession of the West Side power plant and
670. Island Plant and be entitled to use so much water under the
671. existing appropriations now owned by the Company and used in
672. connection with said plants, as may be necessary for the oper-
673. ation of said plants to their respective capacity, provided,
674. however, that the right of the United States to the use of
675. such water shall terminate absolutely upon the transfer of
676. the water rights to be conveyed by the Company under Para-
677. graph 9 (d) hereof, or upon the vesting of the water rights

678. mentioned in Paragraph 31 hereof upon the failure of the
679. United States to make certain payments, and provided fur-
680. ther, that the water used by the United States at said
681. plants shall not be deducted from the amount of water which
682. the Company is entitled to receive after the rights of the
683. Company become restricted to the amounts specified in Para-
684. graphs 10 and 19 hereof, and neither the consent of the
685. Company to the use of such water nor the use of such water
686. by the United States, shall operate to vest any title or
687. permanent right to the use of such water in the United States,
688. and the United States may take possession of all of the chan-
689. nel west of and including the Island plant and headrace, and
690. property described in 9 (b), but it is understood and agreed
691. that the company may retain the possession and use of all of the
692. other property and rights herein agreed to be conveyed or as-
693. signed to the United States until the completion of the pay-
694. ments herein provided for. The United States may pay any
695. instalments before due and thereupon shall be entitled to
696. take the property and receive the deeds provided to be taken
697. or delivered upon the payment of such instalment. It is
698. expressly understood that the first instalment to be paid
699. by the United States hereunder includes the claim of the com-
700. pany for reimbursement for all expenses of whatsoever kind
701. which it has incurred in connection with the consummation of
702. this contract, including surveys, investigations, examinations,
703. and opinions of experts, and for obtaining data and inform-

704. ation upon which to base this agreement.

28. Continued Use of Rights by Company until
Storage Capacity is Provided.

705. As against the United States the company shall be
706. entitled to continue the use of the water at American Falls
707. covered by the company's present appropriations and filings
708. (except such as the United States may become entitled to
709. use to operate the Island and West Side Plants under this
710. agreement) until such time as the 45,000 acre-feet of pri-
711. mary storage capacity herein granted to the company shall
712. have been first provided for the Company and until that time
713. the company shall be entitled to right of way over the lands
714. and rights conveyed to the United States by the company and
715. located in the bed of the river for the purpose of and to
716. the extent necessary for such continued use by the company
717. of said filings and appropriations in so far as such right of
718. way can be used by present structures and extensions without
719. increasing the hazard of flooding the construction work of
720. the United States. Nothing in this contract shall be con-
721. strued as giving the company a right to demand right of way
722. or flowage easement across any land unwatered for construc-
723. tion purposes by the United States except to the extent nec-
724. essary to pass the natural flow of the river.

29. Distribution System in American Falls.

725. The company shall not by anything herein contained be
726. deemed to have transferred any of its poles, lines, or
727. other property not described in Paragraph 9 located in

728. the present town of American Falls or connecting the dis-
729. tribution system in said town with its generating plants,
730. or to have released the United States from any damages to
731. said poles, lines, distributing system or such other pro-
732. perty on account of the relocation of said town made nec-
733. essary by the construction and operation of the proposed
734. reservoir.

30. Reservation in Deed of Reserved Rights.

735. It is the intent of this agreement that all power
736. rights at American Falls except those granted to the United
737. States herein shall be reserved to the company and that the
738. deeds and conveyances by the company to the United States
739. may contain a reservation in favor of the company of the
740. rights reserved to it under the provisions of this agreement.

31. Failure of Appropriation.

741. Where the payments of this contract extend beyond the
742. current fiscal year it is understood that the contract is
743. made contingent upon Congress making the necessary appro-
744. priations for expenditures thereunder after such current
745. year has expired. In case such appropriation as may be
746. necessary to carry out this contract is not made the com-
747. pany hereby releases the United States from all liability
748. due to the failure of Congress to make such appropriation.

749. Any instalment or portion thereof not paid when due
750. shall thereafter bear interest at the rate of 6% per annum
751. payable annually and should any instalment remain due and

752. unpaid for a period of fifteen years the Company shall
753. have the right to waive and surrender to the United States
754. such due and unpaid instalments. The effect of such waiver
755. or surrender shall be to modify paragraph 24 hereof to the
756. following extent:

757. If only the first instalment shall have been paid the
758. grant to the United States as therein provided to store
759. in American Falls reservoir all the storable water not
760. reserved to the Company or granted to it as against the
761. United States shall be limited to such storable water over
762. 2700 second-feet; if only the first two instalments shall
763. have been paid, such grant shall be limited to the stor-
764. able water not reserved to Company or granted to it as
765. against the United States over 2200 second-feet; and if
766. the first three payments shall have been made, then over
767. and above 1700 second feet, such additional amounts of
768. water as listed above to be retained by Company in lieu
769. of cash which it would otherwise be entitled to. The
770. provisions of this paragraph shall not impair the right
771. title or interest of the United States in any property
772. theretofore conveyed to it by the Company or otherwise
773. affect this agreement or the rights hereunder. Should
774. such waiver and surrender of unpaid instalments be made
775. as herein provided and should the United States fail to
776. construct a reservoir of sufficient capacity to provide
777. the storage capacity herein agreed, granted or agreed to

778. be furnished to the company the United States shall not
779. be liable in damages for failure to provide such storage
780. capacity.

32. Company's Remedy for Failure to Receive Storage.

781. It is the understanding and intent of the parties
782. that the storage capacity rights herein granted to the
783. company shall be vested rights in it but that if by change
784. of law, a court or commission decision or in any other way
785. other than by errors or inaccuracies in delivery or release
786. of water from the reservoir the company shall be refused or
787. denied the right to and use of said capacity or any thereof
788. the Company shall be entitled to recover the damages which
789. it may suffer, and to such other relief as a court of
790. competent jurisdiction may adjudge the Company entitled to
791. under the terms of this agreement and the situation of the
792. parties, but in case of any errors or inaccuracies in the
793. delivery or release of water the company shall have and
794. be limited to the same rights and redress as provided for
795. the Irrigation Companies and Districts in the contracts,
796. the form of which is attached hereto and marked Exhibit "C",
797. between the United States and the Irrigation Companies and
798. Districts cooperating with the United States in the con-
799. struction of the Reservoir.

33. Liens and Incumbrances.

800. Liens or incumbrances existing against said premises
801. and of which the company agrees to secure the release, may

802. at the option of the United States be removed at the time
803. of conveyance by reserving the amount necessary from the
804. purchase price and discharging the same with the money so
805. reserved, but this provision shall not be construed to auth-
806. orize the incurring of any lien or incumbrance as against
807. this agreement, nor as an assumption of the same by the
808. United States.

34. Effective when Signed By the Secretary.

809. This agreement shall become effective to bind the
810. United States to purchase said premises immediately upon its
811. approval or signature by the Secretary of the Interior,
812. provided, however, that it shall be of no further force
813. or effect unless signed by the Secretary of the Interior,
814. within ninety days after its execution by the company and
815. authorization, ratification or approval by the board of di-
816. rectors of the company which shall be evidenced by a cer-
817. tified copy of the resolution filed with the Director of
818. the Reclamation Service.

35. Binding on Successors and Assigns.

819. This agreement shall inure to the benefit of and be
820. binding upon the successors and assigns of the company, and
821. also upon the successors and assigns of the United States.

36. No Waiver of Rights of Federal Power Commission or State.

822. The execution of this contract shall not be construed
823. as waiving any authority, jurisdiction or control which the
824. Federal Power Commission may have over the company or its

825. assigns at American Falls or elsewhere, and the approval
826. of this contract by N. B. Swendsen representing the State
827. of Idaho shall not be construed as waiving or abridging
828. any lawful jurisdiction, authority, or control which such
829. officer or the State of Idaho may have over the waters of
830. the state or the issuing of permits, certificates or li-
831. censes thereto.

37. Cooperation with reference to Water Rights.

832. In complying with the laws of Idaho relating to per-
833. fecting water filings made by either party at American Falls
834. both parties shall cooperate so that to the extent permitted
835. by statute and the administrative officers having jurisdiction,
836. the construction of works and use by either party shall ap-
837. ply to proof on the permit of the earliest priority of the
838. class on which such proof can be made. In the event the
839. company desires to transfer and change the points of
840. diversion and use, or any of them, of any of its appropria-
841. tions, rights or permits now held by it in connection with
842. the Island and West Side Power Plants, the Company as against
843. the United States shall have the right at any time after the
844. right of the United States to use the Company's water in con-
845. nection with said Island and West Side Plants' terminates as
846. provided in Paragraph 27 hereof, to transfer and change such
847. points of diversion and use from the Island and West Side
848. Plants to the East Side Plant, or any other plant or plants
849. constructed by the Company at American Falls, subject to the

850. provisions and limitations of this contract in respect to
851. the time of use and amount of water to which the Company may
852. be entitled; and the United States shall cooperate with the
853. company in making such transfer and change; and in the event
854. the United States desires to transfer and change the points
855. of diversion and use of the water rights or any part thereof
856. conveyed to the United States by the Company and to which it
857. may be entitled under the terms of this contract from the
858. present points of diversion and use to any plant or plants
859. owned by the United States at American Falls, the United
860. States shall have as against the Company the right to make
861. such transfer and change in such points of diversion and
862. use subject to the provisions and limitations of this con-
863. tract in respect to the time of use and amount of water to
864. which it may be entitled, and the Company shall cooperate
865. with the United States in securing such transfer and change.

38. Agency Clause.

866. The contractor expressly warrants that he has employed
867. no third person to solicit or obtain this contract in his
868. behalf, or to cause or procure the same to be obtained upon
869. compensation in any way contingent, in whole or in part upon
870. such procurement; and that he has not paid, or promised or
871. agreed to pay, to any third person, in consideration of such
872. procurement, or in compensation for services in connection
873. therewith, any brokerage, commission, or percentage upon the
874. amount receivable by him hereunder; and that he has not, in

875. estimating the contract price demanded by him, included
876. any sum by reason of any such brokerage, commission, or
877. percentage; and that all monies payable to him hereunder
878. are free from obligation to any other person for services
879. rendered, or supposed to have been rendered, in the pro-
880. curement of this contract. He further agrees that any
881. breach of this warrant shall constitute adequate cause
882. for the annulment of this contract by the United States,
883. and that the United States may retain to its own use from
884. any sums due or to become due thereunder an amount equal
885. to any brokerage, commission, or percentage so paid, or
886. agreed to be paid: (Provided, however, it is understood
887. that this covenant does not apply to the selling of goods
888. through a bona fide commercial representative employed by
889. the contractor in the regular course of his business in deal-
890. ing with customers other than the Government and whose
891. compensation is paid, in whole or in part, by commissions
892. on sales made, nor to the selling of goods through estab-
893. lished commercial or selling agents or agencies regularly
894. engaged in selling such goods.

39. Member of Congress Clause.

895. No Member of or Delegate to Congress, or Resident
896. Commissioner, after his election or appointment or either
897. before or after he has qualified and during his continuance
898. in office, and no officer, agent, or employee of the Govern-
899. ment, shall be admitted to any share or part of this con-
900. tract or agreement, or to any benefit to arise thereupon.

901. Nothing, however, herein contained shall be construed to
902. extend to any incorporated company, where such contract
903. or agreement is made for the general benefit of such in-
904. corporation or company, as provided in Section 116 of the
905. Act of Congress approved March 4, 1909 (35 Stat., L. 1109).

IN WITNESS WHEREOF the parties have hereto signed their
names the day and year first above written. Said Company
acting in pursuance of a resolution of its Board of Di-
rectors duly adopted on October 13th 1921.

UNITED STATES OF AMERICA

By Hubert Work

IDaho POWER COMPANY

By F. J. Johnson

ATTEST:

Clarence J. Ward.

Approved except as to Exhibit "C"

N. B. Svendsen
Commissioner of Reclamation

STATE OF IDAHO)
)SS
COUNTY OF ADA)

On this 23rd day of June, in the year 1923,
before me, E. C. Kiersted, Notary Public, personally appeared
F. F. Johnson, known to me to be the President of the corporation
that executed the within instrument and acknowledged to me
that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
my official seal the day and year in this certificate first
above written.

Notary Public

Residing at Boise, Idaho.

My commission expires April 22, 1924.

EXHIBIT " A "

IDAHO POWER COMPANY

1. Lots 1, 2, 3, 4, & 5, Block 19, Original Townsite of ✓ 4-
2. American Falls.
3. Lots 13 and 14, Block 20, Original Townsite of Am. Falls.
4. reserving to the company from the conveyance of said Lots *Tract I*
5. 13 and 14, all parts of said lots under Snake River or in *PP lands*
6. the bed thereof and not conveyed to the United States un-
7. der the provisions of Paragraph 9 (b) and all flowage, ri-
8. parian and pondage rights required for the occupancy, oper-
9. ation and maintenance of the property, dam and works re-
10. tained by the company.
11. Lots 16, 17, 18, 19 and 20, Block 3, Riverside Addition *G*
to American Falls.
12. Lots 17, 18, 19, Block 6, Riverside Addition to Am. Falls. *G*
13. Lots 20, 21, 22, 23, 24, 26, 27, Block 7, Riverside Addition *G*
to American Falls.
14. Lots 23 to 29, inclusive, Block 14, Riverside Ad. to Am. Falls *G*
15. Lots 25 to 30, " Block 15, " " " " " *G*
16. Lots 28, 29 & 30 Block 22 " " " " " *G*
17. Lots 24 to 30, incl. & 37½ " 30 " " " " " *J*
18. Lots 1 to 18, inclusive " 31 " " " " " *F*
19. Lots 9 to 22, inclusive " 38 " " " " " *I*
20. Lots 5 to 14, inclusive " 43 " " " " " *N*
21. Lots 1, 2, 3 and 4 " 44 " " " " " *I*
22. Lots 9 to 16, incl. & 23, 24, & 25, Block 54 " " " " " *G*
23. That part of Lots 25, 26 and 27 of Bl. 23, Riverside " " " " " lying west of a line parallel with and 95 feet west of east line of Lot 24 of said Block.

24. / Blocks 56 to 60 inclusive, of Riverside Addition to \ R
25. American Falls, being described as, Commencing at a
26. point on the left bank of Snake River from whence the
27. Southeast corner of Section 19, Township 7 South, Range
28. 31 East, Boise Meridian, bears South 8 degrees, 33 min-
29. utes East 3269.1 feet; thence South 11 degrees, 42 min-
30. utes West 202.3 feet; thence South 64 degrees, 46 min-
31. utes East 296.7 feet; thence South 52 degrees, 29 minutes
32. East 157.6 feet; thence South 27 degrees, 42 minutes East
33. 135.4 feet; thence South 12 degrees, 11 minutes East 90
34. feet; thence South 6 degrees, 42 minutes West 321.6 feet;
35. thence South 34 degrees, 03 minutes West 350 feet; thence
36. South 27 degrees, 45 minutes West 386.5 feet; thence South
37. 30 degrees, 40 minutes West 200 feet; thence South 44 de-
38. grees, 07 minutes West 602 feet; thence North 40 degrees,
39. 32 minutes, West 279.2 feet to a point on the left bank
40. of the Snake River; thence up stream along said left bank
41. of Snake River to the place of beginning. The meander line
42. of said bank from the point last above described being sub-
43. stantially as follows: North 25 degrees, 24 minutes West
44. 891.6 feet; thence North 56 degrees, 49 minutes West 418
45. feet; thence North 66 degrees, 56 minutes West 1151.8 feet;
46. thence North 38 degrees, 36 minutes West 396.8 feet; thence
47. north 21 degrees, 13 minutes, East 679 feet; thence South
48. 89 degrees, 37 minutes East 451.2 feet; thence South 57 do-
49. grees, 12 minutes East 568.6 feet; thence South 74 degrees

50. 23 minutes East 499.2 feet; thence North 87 degrees, 46
51. minutes East 816.7 feet; thence South 64 degrees, 49 min-
52. utes East 163.3 feet to the place of beginning, comprising
53. 89.09 acres, more or less.

54. A parcel of land situated in Lot 12, Sec. 30., T.7
55. S., R. 31 E., B.M. beginning at a point on the west bank
56. of Snake River, north of the Oregon Short Line Railroad
57. and one hundred feet from the center of the track of said
58. railroad, at the westerly end of the bridge across the Snake
59. River, and at right angles to the center line of said bridge;
60. thence in a southwesterly direction, following the line of
61. the right of way of said railroad, one hundred feet from the
62. center of the track as it now lies, for five hundred thirty-
63. three and $\frac{3}{10}$ feet (533.3); thence North 0 degrees and 20
64. minutes East one thousand feet to a line parallel with the
65. center line of the wagon bridge across the Snake River, and
66. thirty-three feet south of said center line; thence north
67. eighty-five degrees and forty minutes East one hundred and
68. two and $\frac{6}{10}$ (102.6) feet to the bank of Snake River; thence
69. South twenty-six degrees and thirty minutes East eight hun-
70. dred and fifty feet to the place of beginning, containing
71. six and $\frac{53}{100}$ (6.53) acres, more or less.

72. All of that part of Lot 12, Section 30, Township 7 South,
73. Range 31 East, Boise Meridian, described as follows, to - wit:
74. Commencing at a point on the North line of Lot 12, Section 30.
75. T. 7 S., R. 31 E.B.M., which said point bears North 58

76. degrees, 46' East 2592.6 feet from the SW corner of
77. said Section 30, thence South 0 degrees 20' West 243 feet
78. more or less to the NW corner of that certain tract
79. of land lying in said Lot 12, Section 30, North of the Ore-
80. gon Short Line right of way, which said tract of land was
81. conveyed to the Idaho Consolidated Power Company by A.H.
82. Tarbat in a quit claim deed, dated August 23, 1904, said
83. deed being recorded on September 13, 1904, in Book 53 of
84. Deeds at Page 47 of the records of the County Recorder of
85. Blaine County, Idaho, thence North 85 degrees 40' East 102.6
86. feet, more or less, along the north line of the above des-
87. cribed tract of land conveyed by A.H. Tarbat to the Idaho
88. Consolidated Power Company, to the low water line of the west
89. bank of the Snake River; thence northerly along the said low
90. water line of the said west bank of the Snake River to its
91. intersection with the north line of said Lot 12, Section 30,
92. thence South 89 degrees, 30' West 108 feet, more or less along
93. the said North line of said Lot 12, Section 30, to the place
94. of beginning, comprising 0.71 acres, more or less,

95. All that part of Lot 9, Section 30, Township 7 South
96. Range 31 East, Boise Meridian, described as follows; Commencing
97. at a point on the North line of Lot 9, Section 30, T.7 S.,
98. R. 31 E.B.M., which said point is North 89 degrees 41'
99. East 1065 feet from the W $\frac{1}{2}$ corner of Section 30, thence South
100. 30 degrees, 19' East 553 feet to a point, thence South 75 de-
101. grees 8' East 813.7 feet to a point, thence South 0 degrees,
102. 19' East 187 feet to a point; thence North 89 degrees 41'

103. East 94 feet to a point; thence South 0 degrees 20' West
 104. 444 feet to a point on the South line of said Lot 9, Section
 104 A. 30, thence North 89 degrees 30' East 107 feet more or less
 105. along said South line of said Lot 9, Section 30, to the
 106. low water line of the West bank of Snake River, thence north-
 107. erly along the said low water line of the said west bank
 108. of the Snake River to an intersection with the north line
 109. of said Lot 9, Section 30, thence South 89 degrees, 41' West
 110. 646 feet more or less, along the said north line of said
 111. Lot 9, Section 30 to the place of beginning, comprising
 112. 7.73 acres, more or less.
 113. Lots 5 and 8 in Section 30, Township 7 South, Range \checkmark
 114. 31 East, Boise Meridian, comprising approximately 66.26 \checkmark
 115. acres, more or less.
 116. Lots Seven (7), Eight (8), Twelve (12) Thirteen (13) \checkmark
 117. and Fourteen (14) in Section Nineteen (19), Township 7 South \checkmark
 118. Range 31 East, B.M.
 119. Lots 9 and 10, and $E\frac{1}{2}$ of the $SW\frac{1}{4}$ of Section 19, Township
 120. 7 South, Range 31 East, Boise Meridian, comprising 118.27
 121. acres.
 122. Lots 5 and 6 in Section 19, Township 7 South, Range 31
 123. East, Boise Meridian, comprising 87.61 acres.
 124. Lots One (1) and Four (4) in Section Thirteen (13) Township
 125. 7 South, Range 30 East, Boise Meridian.
 126. The $W\frac{1}{2}$ of the $SE\frac{1}{4}$ of Section 18; and Lots 4, 5, 6, 7, 11
 127. and 15 in said Section 18, Township 7 South, Range 31 East

128. Boise Meridian, (said lot 15 being also otherwise described
 129. as the $SE\frac{1}{4}$ of the $SE\frac{1}{4}$ of said Section 18) comprising in all
 130. 264.95 acres.
 131. Lots One (1), Two (2), Three (3), Eight (8), Ten (10),
 132. Twelve (12) and Thirteen (13) in Section Eighteen (18) in
 133. Township 7 South, Range 31 East, Boise Meridian.
 134. Lot One (1), Northeast Quarter ($NE\frac{1}{4}$) and the Northwest
 135. Quarter ($NW\frac{1}{4}$), East Half of the Southwest Quarter ($E\frac{1}{2}SW\frac{1}{4}$),
 136. Northwest Quarter of the Southwest Quarter ($NW\frac{1}{4}SW\frac{1}{4}$) and that
 137. certain parcel of land described as follows, to-wit: Commenc-
 138. ing at the Northwest corner of the SE Quarter ($SE\frac{1}{4}$) of
 139. Section 17, Township 7 South, Range 31 East, Boise Meridian,
 140. thence South 89 degrees, 33' East 2263 feet along the East
 141. and West center line of said Section 17 to a point, thence
 142. South 1 degree, 07' East 545 feet to a point; thence North
 143. 89 degrees 33' West 1074.7 feet to a point; thence North 1
 144. degree, 09' West 165 feet to a point; thence North 78 degrees
 145. 53' West 405.09 feet to a point; thence South 77 degrees 39'
 146. West 428.64 feet to a point; thence South 58 degrees 14' West
 147. 431.13 feet to a point on the North and South center line of said
 148. Section 17; thence North 1 degree, 10'30" West 630 feet
 149. along the North and South center line of said Section 17, to
 150. the point of beginning, comprising 24.03 acres, more or less;
 151. all in Section 17, Township 7 South, Range 31 East, Boise Meridian
 152. Lots 8, in Section 7, Township 7 South, Range 31 East, Boise Meridian,
 153. Lot 9 in Section 7, Township 7 South, Range 31 East, Boise
 154. Meridian, comprising 16.77 acres.

155. All of that part of Lot 7, in Section 7, Township 7
156. South, Range 31 East, Boise Meridian, described as follows:
157. Commencing at a point on the East line of Section 7, Town-
158. ship 7 South, Range 31 East, Boise Meridian, which said point
159. is South 1 degree, 22' East 580 feet from the E $\frac{1}{2}$ Corner of
160. said Section 7; thence South 73 degrees 38' West 620 feet
161. to a point; thence South 43 degrees 52' West 709.6 feet to
162. a point on the South line of Lot 7, Section 7; thence South
163. 88 degrees 53' East 450 feet, more or less, along the said
164. South line of said Lot 7, Section 7, to the low water line
165. of the West bank of Snake River; thence Northeasterly along
166. the said low water line of the West Bank of the Snake River
167. to its intersection with the east line of the said Section
168. 7; thence North 1 degree 22' West 162 feet more or less
168A. along the said east line of said Section 7, to the place of
169. beginning, comprising 6.56 acres, more or less.

170. Lot One (1) in Section Seven (7), Township 7 South,
171. Range 31 East, Boise Meridian.

172. Lots One (1) Two (2) Three (3) and Four (4), Southeast
173. quarter (SE $\frac{1}{4}$), Southeast quarter of the Southwest quarter
174. (SE $\frac{1}{2}$ SW $\frac{1}{4}$), Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$)
175. and that certain parcel of land particularly described
176. as follows: Commencing at a point on the North and South
177. center line of Section 8, Township 7 South, Range 31 East
178. Boise Meridian, which said point is South 1 degree, 12'
179. East 594 feet from the North quarter corner of said Section

180. 8; thence South 58 degrees 56' West 387.6 feet to a point;
 181. thence South 0 degrees 44' East 316 feet to a point; thence
 182. South 45 degrees, 00' West 459.6 feet to a point; thence
 183. South 15 degrees 24' East 602.6 feet to a point; thence South
 184. 45 degrees, 45' West 1074.9 feet to a point; thence South
 185. 70 degrees 21' West 1428.4 feet, more or less to a point on
 186. the West line of said Section 8, which point is South 1 de-
 187. gree, 22' East 3238.0 feet from the Northwest Corner of said
 188. Section 8; thence South 1 degree 22' East 162 feet more or
 189. less along said West line of said Section 8 to its intersec-
 190. tion with the low water line of the North bank of Snake Ri-
 191. ver; thence easterly along said low water line of said North
 192. bank of Snake River to a point where it intersects the North
 193. and South center line of said Section 8; thence North 1 de-
 194. gree 12' West 2049 feet more or less along said North and
 195. South center line of said Section 8 to the point of beginning,
 196. comprising 57.16 acres, more or less; all in Section 8, Town-
 197. ship 7 South, Range 31 East, Boise Meridian.

198. Lots One (1), and Two (2); Northwest quarter ($NW\frac{1}{4}$), South-
 199. west quarter ($SW\frac{1}{4}$), Southeast quarter ($SE\frac{1}{4}$), South half of
 200. the Northeast quarter ($S\frac{1}{2}NE\frac{1}{4}$) all in Section Nine (9), Town-
 201. ship 7 South, Range 31 East, Boise Meridian.

202. Lot One (1), Southwest quarter ($SW\frac{1}{4}$), South half of the
 203. Northwest quarter ($S\frac{1}{2}NW\frac{1}{4}$), Northeast Quarter of the Northwest
 204. quarter ($NE\frac{1}{4}NW\frac{1}{4}$), Northeast quarter ($NE\frac{1}{4}$) all in Section Ten
 205. (10), Township 7 South, Range 31 East, Boise Meridian.

206. All of that part of the Northwest quarter of the North-
207. west quarter ($NW\frac{1}{4}NW\frac{1}{4}$) of Section Eleven (11), Township 7
208. South, Range 31 East, Boise Meridian, Idaho, described as
209. follows, to-wit: Commencing at the Northwest corner of Sec-
210. tion 11, Township 7 South, Range 31 East, Boise Meridian,
211. thence South 89 degrees, 32' East 860 feet along the North
212. boundary line of the said Section 11 to a point; thence
213. South 27 degrees 32' West 1071.7 feet to a point; thence
214. North 89 degrees 32' West 340 feet to a point on the West
215. boundary line of the said Section 11; thence North 1 degree
216. 28' West 955 feet along the said West boundary line of the
217. said Section 11 to the place of beginning, comprising 13.06
218. acres, more or less.

219. Lot One (1) in Section Five (5), Township 7 South, Range
220. 31 East, Boise Meridian.

221. Lots One (1) and Two (2) in Section Four (4) Township 7
222. South, Range 31 East, Boise Meridian.

223. Lots Three (3), Four (4), Five (5) and Six (6), the
224. South half of the Northwest quarter ($S\frac{1}{2}NW\frac{1}{4}$), and all that
225. part of the East half of the Southwest quarter ($E\frac{1}{2}SW\frac{1}{4}$) des-
226. cribed as follows: Commencing at the Northeast corner of
227. Lot Five (5) of Section Two (2), Township 7 South, Range 31
228. East, Boise Meridian, thence South 0 degrees, 09' East 1605
229. feet more or less along the East line of said Lot 5 to its
230. intersection with the low water line of the said East bank
231. of Snake River; thence southerly along said low water line

232. of said East Bank of said Snake river to its intersection
233. with the East line of Lot Six (6) of said Section 2, Township
234. 7 South, Range 31 East, B.M., thence South 0 degrees 09'
235. East 345 feet more or less along said East line of said Lot
236. 6 to a point; which said point is 617 feet North 0 degrees
237. 09' West from the Southeast corner of said Lot 6, thence
238. North 41 degrees 51' East 1977.1 feet to a point on the North
239. and South center line of said Section 2, thence North 0
240. degrees, 11' West 520 feet along said North and South cen-
241. ter line of said Section 2 to its intersection with the
242. East and West center line of said Section 2; thence North
243. 69 degrees 54' West 1322.3 feet along said East and West
244. center line of said Section 2 to the place of beginning,
245. comprising 30.29 acres, more or less, all in Section 2,
246. Township 7 South, Range 31 East, Boise Meridian.

246a. Southwest quarter (SW $\frac{1}{4}$) of Section Thirty-five (35), Township
246b. 6 South, Range 31 East, Boise Meridian.

247. A release from damages by reason of the construction
248. or completion of dam or weir across the Snake River, for
249. Lots 3, 8, 9, 10, 11 and 12 in Block 20 of the Original
250. Townsite of American Falls, and

251. Lots 21 and 22, Block 37, of Riverside Addition to
252. American Falls, and

253. A portion of certain lots in Block 30, and a portion
254. of Lots 25, 26, 27, 28, & 29 in Block 23 of the Riverside
255. Addition to the Townsite of American Falls, Idaho. The por-
256. tion of said lots referred to and on which said damages are
257. hereby released is all of that which lies to the West of a

258. line across the same and described as follows: Beginning
259. at a point on the South line of Lot 29, Block 23, from which
260. the Southeast corner of Lot 24 of said Block bears North 89
261. degrees 34' West 131.10 feet, thence North 33 degrees, 47'
262. east 71.9 feet to a point; thence North 6 degrees 56' East
263. 47.6 feet to a point; thence North 43 degrees 49' East 37.87
264. feet to a point on the North line of Lot 25 of said Block
265. 23; thence South 89 degrees 34' East 29.6 feet along the
266. North line of Lot 25 of said Block 23 to a point; thence
267. South 3 degrees 25' East 22.6 feet to a point; thence South
268. 68 degrees East 20.9 feet to a point; thence North 1 degree
269. 37' East 30.3 feet to a point in the North line of said Lot 24
270. of said Block 23, which is 7.3 feet North 89 degrees 34'
271. West from the Northeast corner of Lot 24 of said Block 23.
272. Said line is intended to describe a course across said lots
273. which is the intersection of a plane at the elevation of
274. 6 feet above said dam with the surface of the ground on
275. said lots, and it is further understood that said plane is
276. at a height of 1 foot 3 inches below the level of the floor
277. of the main Laundry Building now on the said lots as the
278. same is now constructed.

279. A right of way and easement across Block 63 of the
280. Original Townsite of American Falls for the construction,
281. operation and maintenance of a covered sewer and septic
282. tank or other covered sewerage disposal works, said right
283. of way and easements to include the right of ingress and

284. egress over the property of the Company and to be located
285. as mutually agreeable to the United States and the Company.
286. A right of way and easement on Lots 1 and 2 of Block
287. 63 of the Original Townsite of American Falls, for the
288. raising or enlargement of the railroad fill or embankment
289. adjacent to the said lots.

EXHIBIT "B"

1. Easement conveyed by Arthur Humphrey and Fay T. Hum-
2. phrey, his wife, on February 10, 1916, by instrument record-
3. ed in Book 19 of Deeds Page 554 on February 29, 1916, at 10: 5
4. A. M., which conveys, among other things, the right, privi-
5. lege, and easement to flood, impound and release at will
6. waters on, under, over and from the lands hereinafter des-
7. cribed, situated part in the County of Bingham and part in
8. the County of Power, Idaho, and more particularly described
9. as follows, to-wit:-
10. IN TOWNSHIP SIX SOUTH, RANGE THIRTY-ONE EAST,
BOISE MERIDIAN.
10. Northeast quarter, North half of Southeast quarter
11. East half of Southwest quarter, and Southwest quarter of
12. Southwest quarter of Section Twenty-two.
13. West Half of Northwest quarter, and Lot Eight of
14. Section twenty-three.
15. Lot Seven, West Half of Northwest quarter, and South-
16. west quarter of Southwest quarter of Section Twenty-five.
17. Lots One, Two, Three, Four, Five and Six, South half
18. of Northeast Quarter, and Northeast quarter of Southeast
19. quarter of Section twenty-six.
20. Lots Two, Three, Four, Northwest quarter of Northeast
21. quarter, and West half of Section Twenty-seven.
22. Lots Two, Three, Four and Five, and Northwest quarter
23. of Southeast quarter of Section Thirty-three.

24. Lots One, Two, Three, Four, Six, Seven, Eight, Nine,
25. Eleven, and Twelve, Southwest quarter of Northeast quarter,
26. Northwest quarter of Southeast quarter, and East half of
27. Southwest quarter of Section Thirty-four.

IN TOWNSHIP SEVEN SOUTH, RANGE THIRTY-ONE EAST,
BOISE MERIDIAN.

28. Lots Five, Six, Eight, Nine, Ten and Eleven, Northwest
29. quarter of Southwest quarter, and South half of Northwest quart-
30. er of Section Three.

31. Lots Five, Seven, Nine, Ten, Eleven and Twelve, South
32. half of Northeast quarter, Southeast quarter of Northwest
33. quarter, and North half of Southeast quarter of Section Four.

34. Lots five, Six and Seven of Section Five.

35. Lot Five of Section Eight,
36. together with any and all buildings, fences, fixtures, im-
37. provements and other appurtenances attached or appertaining
38. to said premises.